

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

PATRICIA MARTINEZ,

Plaintiff,

vs.

No. CIV 09-0281 JB/KBM

MICHAEL MARTINEZ,
LYNDA LATTA,
ELIZABETH WHITEFIELD,
individually and in her official
capacity, PAUL WIEST, and
JEAN SMITH,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on: (i) Motion to Vacate Pre-Trial Order, filed July 11, 2013 (Doc. 349); and (ii) the Amended Motion to Vacate Pre-Trial Order, filed July 12, 2013 (Doc. 350) (“Amended Motion”). The primary issue is whether the Court should vacate the Pretrial Order, filed July 5, 2013 (Doc. 348), because the Plaintiff Patricia Martinez has not had the opportunity to respond to the Court’s prior Memorandum Opinions and Orders. P. Martinez refused to assist the remaining Defendants in preparing the Pre-Trial Order, did not attend the Pretrial Conference on July 5, 2013, and has not presented a sound basis for vacating the Pretrial Order; she does not have a right to “respond” to the Court’s orders, but has an obligation to comply with them. The Court will thus deny her motions to vacate.

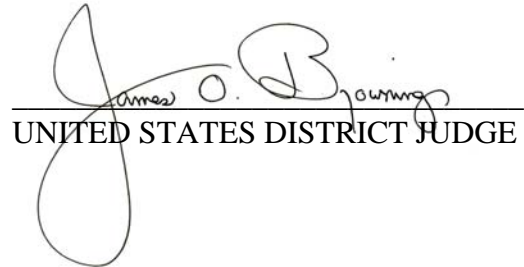
ANALYSIS

P. Martinez asks the Court to vacate the settings in the Pretrial Order and its deadlines because she has not received the ability to respond to the Court’s prior Memorandum Opinions and Orders. P. Martinez fundamentally misunderstands the proper response to the Court’s orders. Her

job is not to respond, with some brief, to the Court's rulings; her role is to obey the Court's orders. While she has responded and argued with almost all, if not all, of the Court's prior rulings, her practice is neither a right nor, in most cases, appropriate. Although P. Martinez objects to this matter proceeding to trial because she did not confer in the Pretrial Order, the Pretrial Order is a form document, and the statement that the "parties conferred and submit the following Pretrial Order," while incorrect, has no effect on whether this matter proceeds to trial. Pretrial Order at 1; Amended Motion at 5. Further, although P. Martinez maintains that she was unaware of the Court's motion hearing set on June 28, 2013, she failed to provide the Court with a notice of unavailability, as she has done in the past. See Amended Verified Affidavit of Patricia Martinez (July 10, 2013), filed July 12, 2013 (Doc. 355); Notice of Unavailability, filed June 3, 2011 (Doc. 157). Had she notified the Court of her unavailability, the Court would have considered her absence in determining when to set this matter for trial, although it would not have necessarily granted her motion on the eve of trial. Accordingly, she has not provided a sound basis for the Court to vacate its Pretrial Order.

P. Martinez has had many years to retain an attorney to assist her in this case. If she wants to have an attorney now, the attorney needs to enter his or her appearance soon. This matter is otherwise proceeding to trial on July 15, 2013. P. Martinez maintains that she will not waive her right to a jury trial by participating in the trial set for July 15, 2013. See Amended Motion at 10. The Court notes a jury has been summoned and will be present on July 15, 2013, and, therefore, it is unclear to the Court how her participation at a jury trial would be a waiver of her rights guaranteed under the Seventh Amendment to the United States Constitution or any issue she is attempting to assert on appeal. If P. Martinez chooses to not appear at trial, the Court may dismiss her case, with prejudice.

IT IS ORDERED that the Plaintiff's Motion to Vacate Pre-Trial Order Doc. 342, filed July 11, 2013 (Doc. 349), and the Amended Motion to Vacate Pre-Trial Order Doc. 342, filed July 12, 2013 (Doc. 350), are denied.



UNITED STATES DISTRICT JUDGE

Parties and counsel:

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Plaintiff pro se

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